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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-7381

FRANK TESAR,

*Petitioner,*

*vs.*

THE TOWN OF CRETE, NEBRASKA, TRUSTEE OF THE RIVERSIDE CEMETERY,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FRANK TESAR,
8957 South Carpenter Street,
Chicago, Illinois 60620,
BE 8-2933,

*Plaintiff Pro Se.*

IN THE

# Supreme Court of the United States

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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The United States Court of Appeals for the Eighth Circuit, dated September 23, 1975, No. 75-1527, denied appeal of the above civil matter and therefore decree is sought for review of the Court hearing.

1. The appellee, as Trustee of the Crete Riverside Cemetery, sold burial plots in 1949 and permitted burials on the cemetery lot without the knowledge of the owner, the appellant.

2. The cemetery lot by the original deed was bought by the appellant's father, Frank Tesar, in 1899. The uncle and brother of the appellant were buried on the lot at that time.

3. The appellant paid to the Trustee, as the receipt shows, $40.50 for perpetual care of the cemetery lot, in 1934, and as further proof two affidavits were presented to the District Court of Nebraska to prove ownership of the appellant and were not allowed by the Court in the court hearing.

4. The Town of Crete, Nebraska, became the owner and the Trustee of the Crete Riverside Cemetery in 1933 and had a

new survey made of the original cemetery lots. The new evidence which was not known at the time of trial shows that the cemetery lots by the survey were changed from Lot 25 Block 4 to Lot 45 Block F and the original cemetery lot was made shorter by 8 feet. While the uncle and brother of the appellant were buried at each end of the cemetery lot, the graves were destroyed and are now non-existing.

5. In the trial of the United States District Court for the District of Nebraska the defendant claimed to have a quit-claim deed from Mary Tesar, mother of the appellant, and that is an error. Mary Tesar never owned the cemetery lot. The alleged quitclaim deed was made without power of an attorney and not one penny was paid to prove a legal transaction.

6. The new evidence is believed to have been known to the two defendant Trustee's attorneys. The jury was misled and the court trial became extremely unfair. The verdict of the jury "Plaintiff takes nothing" shows the grave error.

7. By the verdict the defendant Trustee became the sole owner of the cemetery lot, including the two graves of relatives of the plaintiff. Because of the error, the defendant Trustee is willing to deed the two graves, now non-existing "in lieu" for lots previously sold and now occupied by the Gerner family.

8. The unfair decision of the District Court for the District of Nebraska appears to be an unprecedented civil matter of desecrating privately owned cemetery graves and the selling of property for profit by a Trustee.

The petitioner, pro se, is 80 years of age, has had very little knowledge of court jurisdiction, and prays that his petition to review the judgment or decree in question by writ of certiorari will be considered and granted.

Respectfully submitted,

FRANK TESAR,
8957 South Carpenter Street,
Chicago, Illinois 60620,
BE 8-2933,
*Plaintiff Pro Se.*

# APPENDIX.

UNITED STATES COURT OF APPEALS,
For the Eighth Circuit.

No. 75-1527.

FRANK TESAR,
*Appellant,*

*vs.*

THE TOWN OF CRETE, NEBRASKA, Trustee of the Riverside Cemetery,
*Appellee.*

## ORDER.

Submitted: August 22, 1975.
Filed: September 4, 1975.

This case began January 10, 1966, when Frank Tesar, proceeding pro se, brought a diversity action against the town of Crete, Nebraska, alleging that the town, as trustee of the local cemetery, had wrongfully sold to a third party two burial lots owned by plaintiff. The matter was tried to a jury and a verdict rendered for the defendant. Judgment on the verdict was entered February 9, 1967, and no appeal was taken.

More than eight years had passed when, on June 11, 1975, plaintiff filed a "Motion to Amend the Verdict and Appoint a Legal Counsel." The substance of the motion was plaintiff's general dissatisfaction with the verdict rendered eight years previously.[1] In an order filed June 19, 1975, the district court

1. Plaintiff alleged the following grounds for the motion:
   1. That this matter concerns the ownership of burial lot in the Crete Riverside cemetery, bought by the plaintiffs father

denied any relief. Plaintiff has now taken this appeal from the June 19 order.

There was no error in the denial of relief. The motion cannot succeed as an effort to alter or amend the judgment under *Fed. R. Civ. P.* 59(e), since it comes several years after the allowable period of ten days from the entry of judgment and is thus grossly out of time.

Neither can the motion succeed as an attempt to secure relief from the judgment under *Fed. R. Civ. P.* 60(b). It is true that, as to certain grounds for relief, Rule 60(b) requires only that the motion be made "within a reasonable time." It cannot be said, however, given the substance of the motion in this case, that plaintiff acted with reasonable dispatch. Moreover, the merits of a Rule 60(b) motion are addressed to the discretion of the trial court, *Cline* v. *Hoogland*, ..... F. 2d ..... (8th Cir. June 10, 1975), and it is evident that plaintiff cannot show an abuse of discretion here. .

The appeal is dismissed as frivolous on this court's own motion. *See Local Rule* 9(a).

[Not to be published.]

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in 1899, were [sic] at that time the uncle Anton Penenka and six year old brother Joseph Tesar, of the plaintiff was buried.

2. That the jury trial proved to be extremely unfair because both Attorneys of the defendant, knowingly misled the jury and committed a fraud.
3. That it was known to them that the two plots for the burial of the deceased James Garner, were sold and the burial permitted before the alleged quit claim deed by Mary Tesar, was arranged. James Garner, deceased 10, 12, 1949. and the alleged quit claim deed was arranged Jan. 25th, 1950.
4. That the verdict does not state guilty or not guilty and that the statement "The plaintiff takes nothing" appears to be unconstitutional.
5. That the attached letter from the governor of Nebraska, dated June 16th, 1972, proves the Trustee by his attorney, admit the grave injustice and is willing to return only the two graves for the deprived cemetery property.
6. That the plaintiff prays for Court amendment of the fraudulent action committed by the trustee and for return of the cemetery lot in the original standing.

UNITED STATES COURT OF APPEALS,
For the Eighth Circuit.

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September Term, 1975.

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No. 75-1527

FRANK TESAR,

*Appellant,*

*vs.*

THE TOWN OF CRETE, NEBRASKA,
Trustee of the Riverside Cemetery,

*Appellee.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA.

Petition of appellant for rehearing filed in this cause having been considered, it is now here ordered by this Court that the same be, and it is hereby, denied.

September 23, 1975.